IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 3116 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KIRANKUMAR P GANDHI AND OTHERS
Versus
JETHABHAI RAJABHAI PATEL AND ANOTHER

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Appearance :
MS CHAPATWALA for MR VIJAY H PATEL for Applicants.
NOTICE SERVED for Respondent No.1.
MS MANISHA SHAH, APP for Respondent No. 2.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 23/02/2006

ORAL JUDGMENT

By filing this application under Section 482 of the Criminal Procedure Code, the applicants, who are original accused in connection with M-Case No.10/1993 have prayed for quashing of that complaint.

Respondent No.1 herein has filed the complaint against the applicants as well as one Mr.Umeshbhai Pranvallabhdas Gandhi for the alleged offences under Sections 420, 406 read with Section 114 of the Indian Penal Code.

According to the complainant, the accused have not made the part payment in connection with purchase of grains. Therefore, for such non-payment of the dues, complaint has been filed. According to the applicants, the applicants had dissolved the firm long back and that no partnership was in existence at the relevant time. It is submitted that it was a proprietary concern of accused No.1 – Umeshbhai Pranvallabhdas Gandhi and, therefore, complaint can proceed only against him in his individual capacity and the applicants have no role to play as the firm was dissolved since long.

Though served, respondent No.1 has not appeared in the matter. It is argued by Ms.Chapatwala, learned advocate for the applicants that the applicants have nothing to do with the transaction in question and the firm – Mukesh Brothers and they were not the partners of the firm at the relevant time. In order to substantiate her say, learned advocate for the applicants has relied upon the decision of the learned Single Judge of this Court delivered in Criminal Misc. Application No.3214/1993 to point out that the firm in question was not in existence.

It seems that aforesaid fact is not in dispute. Considering the aforesaid aspect of the matter, this application is allowed. Complaint being M-Case No.10/1993 registered before Bayad Police Station as well as Criminal Case No.13/1993 registered before Judicial Magistrate, First

Class, Modasa camp at Bayad are quashed and set aside so far as present applicants are concerned. It is clarified that complaint can proceed against Umeshbhai Pranvallabhdas and this application is allowed only qua the present applicants. Rule is made absolute accordingly.

(P.B.MAJMUDAR, J.)

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